IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.380 OF 2006
IN
C.A.A.NO.472 OF 2006

Vijay Vitthal Patil @ Dubli ...Appellant

Vs.

The Maharashtra Housing And
Development Authority & Ors. ...Respondents

Shri S.M. Sakhardande for the Appellant.

Shri S.R. Nargolkar, Spl Counsel with Shri A.R. Patil, A.G.P. for the Respondent.

CORAM : A.M. KHANWILKAR, J.
DATE : JUNE 20, 2006.

P.C.:

1. Heard Counsel appearing for the parties. Two preliminary points are raised by the counsel for the Respondent. The first objection is that present Appeal From Order is not maintainable. This is so because the order which is challenged by the Appellant is one passed in Notice of Motion taken out by the Respondent-Plaintiff under Order 39 Rule 2A of the Code of Civil Procedure, 1908 for initiating contempt action against the Respondent. It is submitted that since Trial Court has declined to accept request of the Respondent in his behalf such order is not amenable to the Appeal From Order in view of the

provisions of Order 43 of the Code of Civil Procedure, 1908. There is substance in this submission.

2. It was next contended on behalf of the Respondent that in fact the so called irregularity which was committed by the Respondent as now been remedied for which reason it will not be necessary to precipitate the matter. I am not examining this aspect of the matter.

3. Counsel for the Appellant however contends that the Appeal From Order has been filed because the purview of the order as passed is one referable to the provisions of Order 39 Rule 4 of the Code of Civil Procedure, 1908 and said order has been brought in Appeal by way of Appeal From Order. It is not possible to accept this submission. This is so because this Court is concerned with the final order passed on the proceedings initiated by the Appellant thereby declining action against the Respondent for breach of order of status-quo. Such order is not amenable to the Appeal From Order.

4. If the Appellant is aggrieved by the

observations made in the impugned order, it will be open for the Appellant to take recourse to other remedy as may be permissible by law. Hence, dismissed.

JUDGE